

November 22, 2004

RE: PROCEEDING 01-338

Dear FCC Commissioners,

As the president of EGIX, Inc. and EGIX Network Services, I am responsible for the well-being of our companies and the developments or trends in the telecommunications field. I write this letter to voice my concerns over recent developments.

eGIX is one of the few privately-held, facilities-based, competitive local exchange carriers delivering IP communications. We operate a state-of-the-art IP communications network and provide quality solutions that combine high speed Internet access, local/long distance voice services (VoIP), mobility, personal & enterprise productivity, desktop integration and business applications. We view IP communications as so much more than a substitution for traditional telephony services; it is an opportunity to break away from the shackles that have limited our imagination, stifled innovation and growth.

In addition to our substantial capital investment in technology, equipment, facilities and people, we provide innovative IP services (including VoIP) for thousands of consumers and small to medium-sized businesses. At a minimum, the survival of our business depends upon the continuation of unbundled elements, including DS-1 and DS-3 loops at **cost-based rates**. Similarly, it is unfair to competition when special access is not made available at TELRIC rates where it is not offered on a competitive basis.

In today's environment, cable networks are unavailable to us and in fact do not cover enough of our customer base to be an option for access, our experience with wireless over public frequencies is that it is not a reliable substitute for our mission critical applications, and our review of broadband over power line (BPL) is that it is unproven on many counts to be a viable commercial solution. The BOC spin doctors and lobbyists would have you believe there are lots of alternatives. Here is a dose of non-spin reality from main street America - - **there is no solid, viable alternative TODAY that replaces accessibility to "last mile connectivity" for us! Anything short of pro-competition telecom mandates that completely and cleanly dispel prejudice towards our innovative services would be an implicit endorsement of a policy to re-monopolize the telecom industry.**

Regulatory uncertainty is forcing competitors to exit markets, thereby accomplishing the precise result that the entire body of regulation was intended to prevent! Like in other parts of the country, in Indiana we have gone from over 10 competitors to 4 in less than a year, leaving some parts of the state with no alternative to the ILEC. The decline in the number of ISPs is more dramatic. Are current policy decisions working? No! The FCC's policy direction reduces consumer choice. In 1996, I purchased a T-1 from the ILEC for \$1100 a month, that same T-1 today is \$230. Studies by the Phoenix Center, William Lehr, Mark Bryant, and others have empirically demonstrated the negative impact of regulatory decisions that favor no competition will result in higher prices, stifled innovation, and certain job loss.

Executives and entrepreneurs across the United States are working hard before the FCC and state public utility commissions to defend their remaining legal rights as the Bell Operating Companies are thwarting the letter and spirit of the TRO by positioning themselves to halt the delivery of access. These types of legal maneuvers require us (or companies like eGIX) to reallocate valuable financial resources to counter-productive efforts; preventing us from creating more high paying jobs and slowing down the development of new innovative solutions. It is the BOC's mode of operation, "a death by a thousand cuts." **Only action by the FCC in the form of long-term competitive rules governing unbundled elements and access rights will forestall a serious problem. If they continue to close off or limit access, then it is realistic to predict that they will show the same prejudice and choke off (or cause a lower quality of service) all other IP communications services that we deliver. And, so will go VoIP and a whole host of IP based innovations that need full, clean access that we have worked so hard to deliver.**

The time is NOW to stop this nonsense! For companies like us, that have done all the right things, been good stewards of business, invested in our communities, paid our taxes, earned the confidence of our customers, provided high paying jobs

and delivered new innovations, this is a kick in the stomach. I ask simply that the FCC Commissioners act quickly to establish long-term rules that maintain a competitive environment in which ALL service providers can be assured the opportunities to deliver new, promising IP based technologies. Thank you for your time and consideration in this matter.

Sincerely,

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